Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

NO. 92-1033

DAVID JAMES TEMPLETON, ET AL
Petitioners

vs.

UNITED STATES OF AMERICA
Respondent

REPLY BRIEF BY PETITIONERS, TO UNITED STATES IN OPPOSITION

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EDITOR'S NOTE

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On Petition For a Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit

REPLY BRIEF BY PETITIONERS, TO UNITED STATES OPPOSITION

I.

Respondent's lone QUESTION PRESENTED for this court's review, is not the question presented by Petitioner.

Petitioners' two primary questions were:

(1) WHETHER A STATE'S STATUTE OF LIMITATIONS COVERING SUITS FOR FRAUD, BARS THE UNITED STATES FROM BRINGING SUIT FOR FRAUD BEYOND THE TIME LIMIT ESTABLISHED BY THE STATE. (Emphasis added)

(2) WHETHER THE 7TH CIRCUIT COURT OF APPEALS CAN VIOLATE ITS OWN STANDARD FOR SUMMARY JUDGMENT AND AFFIRM SUMMARY JUDGMENT WHEN THERE ARE GENUINE ISSUES OF MATERIAL FACT IN DISPUTE.

Respondent's one question listed in

its Brief in Opposition, is stated:

"Whether the Indiana statute of limitations for commencing actions to set aside fraudulent conveyances bars this suit by the United States to enforce its tax assessment." (Emphasis added)

Respondent has attempted to cloud the issue by changing the direction of the Questions Presented.

Petitioners are not challenging whether Respondent is barred by the Indiana Statutes of Limitations to enforce its tax assessment, against Templetons.

Rather, Petitioners DO challenge Respondent's claim to set aside a conveyance by bringing suit for fraud beyond the maximum time frame allowed under state law, and the court's authority to allow the suit.

On Pg. 5 Line 20 Respondent refers to the six-year period granted to it, after the date of its assessment, to enforce its lien:

"The Internal Revenue Code authorizes the United States to bring suit...to enforce the lien of the United States' by a proceeeding commenced at any time within six years of the date of the assessment..."

Respondent states that the six-year time period begins on the date of its assessment. This may be true, but it does not apply to this instant case, where the six-year time period is not to enforce any lien, but to bring suit pertaining to an alleged fraudulent convevance. For that aspect of this instant case, the time period begins on the date of the alleged fraudulent action and not on the alleged assessment date.

Indiana law has long held that the cause of action for fraud accrues and the statute of limitations begins to run from the date the alleged fraud was perpetrated.

The starting date in this instant

case was November 2, 1982, the date of the transfer of property from Templetons to the Trust. Respondent's suit was brought on April 20, 1989, six years and five months later.

"Indiana Code 34-1-2-1 provides that suits for relief from fraud must be commenced within six (6) years of the accrual of the action. In Indiana the cause of action for fraud accrues and the statute of limitations begins to run, from the date the fraud is perpetrated." See Forth v. Forth, 409 N.E. 2d 641, 642 (Ind. Apps. 2nd Cir. 1980)

"The statute runs unless there is active and intentional concealment of the fraud. See Forth v. Forth, 409 N.E.2d at 642 FN5.

In this instant proceeding, there is no allegation, let alone any facts, of concealment of the action that is alleged to constitute fraud.

It is clear that the Indiana Statute of Limitations for bringing suit for fraud, applies in this case, as to the foreclosure on the property in trust.

U.S. vs. Vellalos 780 F. Supp. 705 D.C. Hawaii (1992) shows the distinction between Respondent's "right" to turn an assessment into a judgment or to foreclose on any property owned by Templetons, from that of bringing an action alleging fraud, beyond the governing Indiana statute of limitations on property not owned by Templetons.

II.

The district court compounded its error by granting summary judgment to the government when there were genuine issues of material fact in dispute.

Petitioners presented five (5) affidavits to the district court establishing the facts in dispute. The facts stated therein were never rebutted by Respondent.

It is well established in law that "fraud determinations are findings of

fact..." Archer v. Commissioner, 227 F2d 270, 274 (5th Cir. 1955). Any such determination of fraud should have been for a jury to decide.

In addition to those facts established, it is a well established principle of law that "fraud rests upon intent" and intent is also for a jury to decide.

III.

There is no requirement in Indiana law for a trust agreement to be recorded. Petitioners repeatedly offered the instant trust agreement to the court upon request, for an in-camera inspection, to clear up any question the court may have as to the validity of the Trust. Petitioners' offer was ignored.

IV.

CONCLUSION: Respondent states that the decisions of the courts below:

"...do not conflict with any decision of this court or of any other court of appeals." (Emphasis added)

The decisions of the courts below certainly do conflict with this court, as no other court allows for summary judgment when there are material issues of fact in dispute.

Review by this court is warranted, as there is conflict between federal district courts and state courts on the issue of state statutes of limitations, and reversible error exists as to the violation of the standards for summary judgment by the courts below, established by this court and the 7th Circuit Court of Appeals.

THEREFORE, The Petition For a Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,

Date: 3-24-93

Petitioners:

Rachel Templeton

David & Rachel Templeton
Michael Venegoni, as Trustee of The Seven Eighteen Trust